

Chapter 4.30, Pushcarts

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4.30.010 Definitions.

The following terms shall have the following meanings:

“Beverage” means any nonalcoholic liquid, hot or cold, intended for use in whole or in part for human consumption.

“City property” means all outdoor areas which are owned, or leased as lessee, by the City or one of the City’s departments, or upon which the City or one of its departments has an easement or right-of-way including, but not limited to, streets, sidewalks, plazas or other areas adjacent to buildings owned by the City or one of its departments.

“Food” means any raw, cooked, frozen or processed edible substance or beverage intended for use in whole or in part for human consumption.

“Private property” means all outdoor areas which are not owned or leased by any governmental agency or entity, including, but not limited to, streets, sidewalks, plazas, parking lots, or other areas adjacent to buildings not owned by a governmental agency or entity.

“Pushcart” means a non-motorized wheeled cart which may be moved by one person and which is designed and used for displaying, keeping or storing any food or beverage for sale by a vendor.

“Special Event” is any event so designated by the City of Bloomington Board of Public Works.

4.30.020 Operations generally.

It is unlawful to locate a pushcart in the City except in accordance with the provisions of this Chapter.

4.30.030 Business License—Required.

- (a) It is unlawful to locate a pushcart in the City without first having secured a license to do so as provided by this Chapter.
- (b) A separate license shall be required for each pushcart.
- (c) This Chapter does not apply to any recognized participant of a Special Event.

(d) It is not necessary to obtain a temporary use permit under Chapter 20 of the Bloomington Municipal Code in order to obtain a license for a pushcart under this Chapter.

4.30.040 Business License—Application.

Any person desiring a license under this Chapter shall submit a fully completed application to the City Controller at least fourteen days prior to the proposed date of utilizing the pushcart. The application must set forth or have attached the following information as specified:

(a) The applicant's name, current physical address, telephone number, email address and date of birth;

(b) The name, current physical address, and telephone number of the person, firm, limited liability company, corporation or organization which the applicant is employed by or represents, and the length of time of such employment or representation;

(c) If the applicant is employed by or represents a firm, limited liability company or corporation, the applicant shall provide the name and current physical address of all members of the firm or limited liability company, or all officers of the corporation, as the case may be;

(d) If the applicant is employed by or represents a corporation or limited liability company then there shall be stated on the application the date of incorporation or organization, the state of incorporation or organization, and if the applicant is a corporation or limited liability company formed in a state other than the State of Indiana, the date on which such corporation or limited liability company qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana;

(e) The type of products to be sold and the hours of the day the applicant plans to conduct business;

(f) The place or places where said business may be conducted, and a written statement, if applicable, from the owner of any private property wherein the business may be conducted authorizing the applicant to use the property;

(g) The duration of the license being sought;

(h) A statement as to whether or not a license, under the provisions of this Chapter, or any other similar ordinance of the City of Bloomington or any other county, town, municipality, or State has been revoked, together with the details thereof; and

(i) The designation of a resident of the State of Indiana as a registered agent for purposes of receiving notices from the City of Bloomington or other service of process, as a result of doing business in the City of Bloomington

4.30.050 Business License—Prerequisites.

An application for a license under this Chapter shall not be considered unless proof of the following are provided with the application:

(a) All applicable permits required by the Monroe County Health Department, including but not limited to a Food Service Establishment License or a Certified Food Handler Certificate;

(b) Proof of registration as a business with the Indiana Secretary of State;

(c) Proof of an Employer Identification Number;

(d) If business is to be conducted on City property, a resolution from the City's Board of Public Works;

(e) If business is to be conducted on or in property owned or managed by the City of Bloomington Parks Department, including those portions of the B-Line Trail not specifically permitted by this Chapter, a letter of approval from said Department;

(f) If any type of spark, flame or fire will be produced, proof of an Open Burn Permit issued by the City of Bloomington Fire Department;

(g) Proof of insurance in accordance with the amounts established by this Chapter;

(h) A scaled site plan showing the location of the proposed pushcart and the property's: drives, parking access aisles, fire lanes, sidewalks and accessible routes; and

(i) Proof of payment for, or exemption from, the applicable fee.

4.30.060 Business License—Duration and Fee.

(a) Each applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a consecutive period of time):

- (1) One Day License: \$25.00;
- (2) Three Day License: \$30.00;
- (3) Seven Day License: \$50.00;
- (4) Thirty Day License: \$75.00;
- (5) Three Month License: \$150.00;
- (6) Six Month License: \$200.00; and
- (7) One Year License: \$350.00.

(b) The following listed organizations and/or entities while required to obtain a license under this Chapter are exempt from having to pay any fees, so long as the proceeds thereof are to be used exclusively for religious, charitable, educational or scientific purposes:

- (1) Churches;
- (2) Schools;
- (3) Benevolent organizations;
- (4) Fraternal organizations; and
- (5) Other similarly situated organizations.

(c) Pursuant to Ind. Code 25-25-2-1, while all honorably discharged veterans are required to obtain a license under this Chapter they are exempt from having to pay any fees.

4.30.070 Application Fee—Refund on Denial.

An applicant shall pay an application fee in the minimum amount of \$25.00, unless exempted under Section 4.30.060. In the event the license is granted, the application fee shall be retained by the City and applied toward the license fee. In the event the license is denied, \$20.00 of the application fee shall be retained to defray the administrative expense incurred in investigating and processing the application, and any remainder shall be refunded to the applicant.

4.30.080 Effect of Cessation of Business.

No deductions shall be allowed from the fee for a license issued pursuant to this Chapter for any part of the term of which the licensee does not engage in such business.

4.30.090 Business License—Insurance and Indemnity.

(a) Each applicant for a license shall provide a certificate of liability insurance to the City Controller upon a form approved by the Corporation Counsel of the City of Bloomington, insuring the applicant, and naming the City of Bloomington as co-insured, against the following liabilities and in the following amounts relative to such activity:

- (1) Personal injury: \$100,000.00 per occurrence and \$300,000.00 in the aggregate; and
- (2) Property damage: \$25,000.00 per occurrence and \$50,000.00 in the aggregate.

(b) Each applicant shall provide a document approved by the Corporation Counsel for the City of Bloomington, in which the applicant agrees to indemnify and hold harmless the City of Bloomington for losses or expenses arising out of the operation of his/her business.

4.30.100 Business License—Issuance.

(a) The Controller shall within fourteen days of receipt of the completed application issue the business license to the applicant if the Controller finds the following:

- (1) Compliance with all provisions of this Chapter;

- (2) The applicant has not had a prior license issued under this Chapter, or any other similar license authorized by a different governmental entity, suspended or revoked; and
- (3) The applicant has not been previously found to be in violation of this Chapter, or any other similar law promulgated by a different governmental entity.

(b) The Controller may, upon a finding of appropriateness, issue a business license to an applicant who has been found to meet the terms of the above subsections 4.30.100(a) (1)-(2).

(c) Failure of the Controller to issue a license within fourteen days of completion of the application constitutes denial of the application. The applicant may appeal the denial by filing a written statement to the City's Board of Public Works within ten days after passage of those fourteen days. The Board of Public Works shall, within the next thirty days, determine whether the applicant has complied with all provisions of Section 4.30.100(a), and if so, shall authorize the Controller to issue the license if there is such compliance. Prior to this determination, which is final and conclusive, the applicant will have an opportunity to be heard regarding the denial.

4.30.110 Business License—Transferability.

A license issued pursuant to this Chapter shall not be transferable to another licensee.

4.30.120 Business License—Identification.

(a) All licenses issued by the Controller under this Chapter shall be prominently displayed on the pushcart and shall be shown to any person who requests to see the license.

(b) Failure to display or exhibit a license in accordance with this Section may be grounds for suspension or revocation of said license.

4.30.130 Location Restrictions.

(a) No pushcart shall locate in any parking lot, parking space, or parking facility owned, leased or managed by the City of Bloomington unless approval has been given by the City's Board of Public Works.

(b) No pushcart serving food or beverages shall operate within fifty feet of any facade of a ground level establishment that also sells food or beverages, or operate within fifty feet of the perimeter of such an establishment's outdoor seating area, regardless of whether or not the pushcart is currently conducting business. The distance restriction only applies from an hour before the opening time to an hour after the closing time posted by a ground level establishment on the facade of its building.

(c) No pushcart shall locate in a street, street median strip or alleyway.

(d) Pushcarts shall be located a reasonable distance from all posted bus stops, crosswalks, driveways, alleyways, right-of-way lines of two or more intersecting streets and building entrances or walk-up windows.

(e) No pushcart shall locate within a one block radius of a Special Event unless prior approval has been granted by either the operator of the Special Event or the City's Board of Public Works.

(f) No pushcart shall be located in a manner which would significantly impede or prevent the use of any City of Bloomington property, or which would endanger the safety or property of the public.

(g) No pushcart shall be located within fifteen feet of any fire hydrant.

(h) No pushcart shall locate within any zoning district except the following: Commercial General; Commercial Arterial; Commercial Downtown; Industrial General; Business Park; and Institutional.

(i) Pushcarts shall only be located on private property if the private property owner has provided both the business operator and the City written permission for the pushcart to locate on said property.

(j) No pushcart operating on private property shall displace required parking or landscaping nor block any drives, parking access aisles, fire lanes, sidewalks, or accessible routes required for the private parking by the City's zoning code.

(k) No pushcart shall park near an intersection and in a manner that blocks the line-of-sight of drivers using adjacent roadways.

(l) No pushcart shall locate on the B-Line Trail except in the following permitted areas:

- (1) Between the north side of Dodds Street and the south side of 2nd Street;
- (2) Between the north side of 3rd Street and the south side of 4th Street; and
- (3) Between the north side of 6th Street and the south side of Fairview Street.

4.30.140 Prohibited Hours.

No pushcart shall be located on any public property between the hours of 4:30 a.m. and 6:30 a.m.

4.30.150 Standards of Conduct.

All pushcart operators shall conform to the following standards of conduct:

(a) Pushcart operators shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Bloomington Noise Ordinance as stated in Title 14 of the Bloomington Municipal Code;

(b) A device may not be used which would amplify sounds nor may attention be drawn to the pushcart by an aural means or a light-producing device (examples of such devices may include, but are not meant to be limited to the following: bull horns and strobe lights);

(c) No pushcart may be permanently or temporarily affixed to any object, including but not limited to buildings, trees, telephone poles, streetlight poles, traffic signal poles or fire hydrants;

(d) No pushcart may be used to advertise any product or service which is not authorized to be sold from that pushcart;

(e) Each pushcart unit shall be limited to one sandwich board sign that meets the provisions of Section 20.05.086 of the Bloomington Municipal Code regardless of the zoning district in which it locates, provided a sign permit is obtained from the City's Planning and Transportation Department;

(f) No pushcart may make use of any public or private electrical outlet while in operation;

(g) Each pushcart shall protect against littering and shall have both an adequate trash receptacle and a separate receptacle for recyclable materials:

- (1) The trash and recyclable receptacles shall be emptied sufficiently often to allow disposal of litter and waste by the public at any time;
- (2) The trash and recyclable receptacles on the pushcart shall not be emptied into trash or recyclable receptacles owned by the City of Bloomington;
- (3) Liquid from the pushcart shall not be discharged on or in a City sewer or drain or elsewhere on City property, nor on private property without the express written consent of the owner thereof;

(h) Before leaving any location each pushcart shall first pick up, remove and dispose of all trash, refuse and/or recyclable materials, including products spilled on the ground within twenty feet of the pushcart;

(i) No pushcart shall expose any pedestrian to any undue safety or health hazards nor shall it be maintained so as to create a public nuisance;

(j) Each pushcart shall be maintained free and clear of dirt, and finishes shall not be chipped, faded or unduly marred;

(k) Foods or beverages which present a substantial likelihood that liquid matter or particles will drop to the street or sidewalk during the process of carrying or consuming the food or beverage shall be sold in proper containers so as to avoid falling to the street or sidewalk;

(l) Pushcarts which utilize a grill or device that may result in a spark, flame or fire shall adhere to the following additional standards:

- (1) Be placed approximately 20 feet from a building or structure;
- (2) Provide a barrier between the grill or device and the general public;
- (3) The spark, flame or fire shall not exceed 12 inches in height;
- (4) A fire extinguisher shall be within reaching distance of the pushcart operator at all times;

- (m) Pushcart operators shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out on City property, including, where possible, the removal of the pushcart and cessation of such sales;
 - (n) No pushcart shall ever be left unattended;
 - (o) Pushcarts shall not be stored, parked or left overnight on any City property;
 - (p) All pushcarts which are food service establishments as defined by Title 10.17 of the Bloomington Municipal Code shall install an approved grease interceptor or grease trap. Foods, oils and greases shall never be discharged into the City's sewer or storm drains;
 - (q) All pushcart operators are required to collect and pay all applicable and appropriate sales taxes;
 - (r) No pushcart shall provide customer seating unless approval has been given by the City's Board of Public Works and the City's Planning and Transportation Department;
 - (s) All pushcarts shall comply with the lighting standards found in Chapter 20.05 of the Bloomington Municipal Code;
 - (t) All pushcarts shall comply with the vision clearance standards found in Chapter 20.05 of the Bloomington Municipal Code;
 - (u) No pushcarts shall have a drive-thru; and
 - (v) The decibels of any generator(s) associated with a pushcart shall not exceed "70dBA".
- (1) Such noise measurement shall be made at a height of at least four (4) feet above the ground and at a point approximately twenty-five (25) feet away from where the noise is being emitted on a sound level meter operated on the "A" weighting network (scale).
 - (2) No person other than the operators shall be within twenty-five (25) feet of the sound level meter during the sample period.
 - (3) Sound measurements shall be conducted at that time of day or night when the relevant noise source is emitting sound.
 - (4) The sound level measurement shall be determined as follows:
 - (A) Calibrate the sound level meter within one (1) hour before use.
 - (B) Set the sound level meter on the "A" weighted network at slow response.
 - (C) Set the omnidirectional microphone in an approximately seventy-degree position in a location which complies with subsections (1) and (2) herein. The operator of the sound level meter shall face the noise source and record the meter's instantaneous response.
 - (D) Recalibrate the sound level meter after use.
 - (5) It shall be unlawful for any person to interfere, through the use of sound or otherwise, with the taking of sound level measurement.

4.30.160 Safety Requirements.

All pushcarts shall comply with the following safety requirements:

- (a) All equipment installed shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- (b) All utensils shall be stored in a manner to prevent their being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided by the vendor to avoid loose storage of knives and other sharp or bladed instruments.
- (c) All foods and beverages to be used, prepared, cooked, displayed, sold, served, offered for sale or stored in a pushcart, or during transportation to or between locations shall be from sources approved by the health authorities of the point of origin and must be clean, wholesome, free from spoilage, adulteration, contamination or misbranding and safe for human consumption. The standards for judging wholesomeness for human food shall be those promulgated and amended from time to time by the United States Food and Drug Administration, United States Department of Agriculture, the State Department of Health, the State Department of Agriculture, and the Monroe County Health Department and published in the United States Code of Federal Regulations, the Indiana Code Annotated or the Indiana Administrative Code, and the Monroe County Code.
- (d) Each pushcart shall be constructed so that the portions of the pushcart containing food shall be covered so that no dust or dirt will settle on the food; and such portions of the pushcart which are designed to contain food shall be at least eighteen inches above the surface of the public way while the pushcart is being used for the conveyance of food.

(e) The food storage areas of each pushcart shall be kept free from rats, mice, flies and other insects and vermin. No living animals, birds, fowl, reptiles or amphibians shall be permitted in any area where food is stored.

(f) Hazardous non-food items such as detergents, insecticides, rodenticides, plants, paint and paint products that are poisonous or toxic in nature shall not be stored in the food area of the pushcart.

4.30.170 Penalties—Revocation of License.

(a) Any person, partnership, limited liability company or corporation which violates any provision of this Chapter, shall be subject to the following penalties:

(1) Operating a pushcart without a license:

First offense	\$2,500.00
Second offense within any 12-month period	\$5,000.00
Third offense, or each thereafter, within any 12-month period	\$7,500.00

(3) Failure to comply with any other provision of this Chapter:

First offense	\$250.00
Second offense within any 12-month period	\$500.00
Third offense, or each thereafter, within any 12-month period	\$1,000.00

(b) In addition, the Controller’s Office shall, after notice and hearing before the City’s Board of Public Works, suspend or revoke, by written order, any license issued hereunder if the Board of Public Works finds:

- (1) The licensee has violated any provision of this Chapter or any rule or regulation lawfully made under and within the authority of this Chapter;
- (2) The licensee is operating the pushcart licensed under this Chapter in a manner contrary to State or local code; or
- (3) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have permitted the Controller’s Office to refuse originally to issue such license.

(c) Any person charged with violating the provisions of this Chapter may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this Chapter's provisions.

4.30.180 Restriction on Use and Licenses.

The City of Bloomington has exclusive authority to restrict the use of pushcarts and the issuance of business licenses for pushcarts under the following conditions:

(a) The City may restrict the use of pushcarts in certain designated areas of the City in the event of an emergency declared by the Mayor, the Chief of Police, the Fire Chief, the Director Public Works, the Director of Utilities, and/or any of the aforementioned duly appointed designees.

(b) Absent an emergency as described above, the City may restrict the use of pushcarts in certain designated areas of the City provided the City has given each pushcart licensee written notice of the restriction at least seventy-two hours in advance of the restriction going into effect.